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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,087	01/29/2002	Haruko Toyoshima	0445-0315P	2505

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/25/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/058,087

Applicant(s)

TOYOSHIMA, HARUKO

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. The amendments to the abstract do not comply with 37 CFR 1.121 as revised in that the language deleted has not been struck through and the language added has not been underlined. Any further response should include an abstract which complies with 37 CFR 1.121.

#### ***Specification***

#### ***Drawings***

2. The corrected or substitute drawings were received on 9-8-03. These drawings are approved by the Examiner.

#### ***Description***

3. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the amendment to page 1, line 6, lines 3-4, i.e. "up to" should be --as well as--, abstract, line 3.

#### ***Claim Objections***

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4. Claims 1-4 are objected to because of the following informalities: In claim 1, line 4, "and" should be deleted. On line 11, after "member", insert --in a width direction of the diaper--. On line 12, delete ", respectively," and change "a" to --the--. On line 14, delete "each". On line 15, ", provided with one of" and insert --provided with--. In claim 4, line 2, "each"(last) should be deleted, on line 4, "of a" should be --of the-- and on line 5, "the" should be deleted.

Appropriate correction is required.

#### ***Claim Language Interpretation***

5. Lines 16-19 of claim 1 do not require the members be stretched from a nonstretched state to a stretched state and then fixed to the areas in the stretched state and then released from such state allowing contraction to the nonstretched state. These lines only require the fixing of a temporarily or permanently stretched material to the areas and the areas being able to contract due to the disposition of such stretched material.

#### ***Claim Rejections - 35 USC § 102***

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al '584, and thereby Buell et al '274.

See Figure 2, topsheet 24, backsheet 22, core 28, fastening tapes 92, landing zone 44, waist elastic member 34, under-waist members 90, leg elastic members 432. See also col. 14, lines 27-61, col. 15, line 16-col. 16, line 24 of Clear et al, and thereby Buell '274 at, e.g., col. 35,

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line 57-col. 36, line 30, especially col. 36, lines 2-5, i.e. the members 90 can be associated with the topsheet and backsheet in the tensioned condition, i.e. stretched state, col. 51, lines 3-64, esp. lines 56-64, Figure 1, col. 45, lines 23-30, col. 15, lines 16-27, col. 23, lines 13 et seq, col. 33, lines 51-53, col. 42, lines 44-52, col. 43, lines 14-38. It is also noted that 1N is about 150 gf.

### ***Response to Arguments***

7. Applicants remarks on pages 6-8 with regard to formal matters have been noted but are either deemed moot in that such issues have not been reraised or are deemed nonpersuasive for the reasons set forth supra. Applicants remarks on pages 8-11 with regard to the elastic members and the portion having the tapes has been considered but is deemed nonpersuasive because as set forth in the rejection such members are considered 34 and 90 and 34 can be provided at or on both of the end portions and 90 is provided in the rear waist portion, i.e. both are in the portion with the fastening tapes. Applicant's arguments with regard to the extension stress on page 11 is deemed nonpersuasive in light of Buell at, e.g., col. 45, lines 23-30 and incorporated by Clear which also teach the embodiment of the side panels having extension forces greater than those of the waistband, i.e. the extension force of 90 can be greater than that of 34. Finally, Applicant's arguments with regard to the untensioned condition are deemed nonpersuasive in light of Buell at, e.g., col. 36, lines 2-5, and incorporated by Clear, i.e. the members 90 can be applied in a tensioned or stretched condition.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1 and 4.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to K. M. Reichle whose telephone number is 703-308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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KMR

November 15, 2003

*K. M. Reichle*  
KARIN REICHEL  
PATENT EXAMINER